Plains, including this bond, does not exceed the constitutional or statutory limitation." *Held*, that, narrations in municipal bonds attesting their own validity, or reciting their issuance in compliance with conditions precedent created by law, estop no one and bar no road to the investigation of their legality. *Evans et al.* v. *McFarland* (1905), — Mo. —, 85 S. W. Rep. 873.

This decision follows previous rulings of the courts of the same state which say that such recitals are neither prima facie, nor conclusive, evidence of the required authority to issue the bonds and that they do not dispense with the necessity of proving what they recite when an action is brought on the bond. The steps required to be taken, or acts done, in order to confer authority must be shown to have been taken by evidence outside the mere recital on the face of the bonds and if a record is required by law to be kept such record is the best evidence of the facts and primarily none other is admissible. *Thornburg* v. *School District*, 175 Mo. 12; *Heard* v. *School District*, 45 Mo. App. 660. This view is not without support in other states. *Cagwin* v. *Town of Hancock*, 84 N. Y. 532; *Lippincott* v. *Town of Pana*, 92 Ill. 24; *Veeder* v. *Town of Lima*, 19 Wis. 298. The federal courts uniformly hold that where a city has power, under the Constitution and laws, to issue certain bonds and such bonds are issued containing recitals representing that everything required by law to be done has been done, before issuing the bonds, purchasers have the right to assume that such recitals are true. *Hackett* v. *Ottawa*, 99 U. S. 86; *Ottawa* v. *National Bank*, 105 U. S. 342; *Evansville* v. *Dennett*, 161 U. S. 434; *Waite* v. *Santa Cruz*, 184 U. S. 302; *City of Huron* v. *Savings Bank*, 86 Fed. 272; *Clapp* v. *Village of Marice City*, 111 Fed. 103; *Board of Com'rs.* v. *Vandriss*, 115 Fed. 866. And a majority of the state courts have followed the rule established by the Supreme Court of the United States. *Thompson* v. *Village of Mecosta*, 127 Mich. 522; *South Hutchinson* v. *Barnum*, 63 Kan. 872; *Fulton* v. *Town of Riverton*, 42 Minn. 395; *Supervisors* v. *Brown*, 67 Miss. 684; *Kerr* v. *City of Cory*, 105 Pa. St. 282; *State* v. *Commissioners*, 37 Ohio St. 526.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE OF INDEPENDENT CONTRACTOR.—The City of New Orleans, through a board of commissioners, contracted for the furnishing and planting of a large number of trees upon neutral ground in St. Charles Avenue. This ground was not ordinarily used by pedestrians and on ordinary occasions there was no necessity for such use. The city retained no control over the manner of planting the trees except to designate the places at which they were to be planted. The contractor, in pursuance of his contract, dug a hole several feet deep and permitted it to remain open, without covering or light to indicate the danger, on the night of Mardi Gras. On that night, a large crowd collected in the avenue to view the parade and because of such crowd and the surrounding darkness the plaintiff was unable to see the hole into which she fell. This action was brought against the contractor and the city to recover damages for injuries sustained by her from such fall. *Held*, that the city, having let the work to an independent contractor and the work not being of a kind necessarily dangerous for purposes of public travel, was not liable. *La Groue et ux.* v. *City of New Orleans* (1905), — La. —, 38 So. Rep. 160.

It is well settled that the doctrine of "respondeat superior" applies only where the relation of master and servant or principal and agent exists and that neither of these relations is present where the employer does not retain control over the mode and manner of performance of the work under the contract, the one performing the work being in such case an independent contractor. STORY ON AGENCY (8th Ed.) 454; and this applies to municipal corporations as well as to individuals. DILLON ON MUNIC. CORP. (4th Ed.) 1028; *Pack* v. *Mayor of New York*, 8 N. Y. 222; *City of Cincinnati* v. *Stone et al.*, 5 Ohio St. 38; *City of Detroit* v. *Michigan Paving Co.*, 38 Mich. 358. But this exemption does not extend to a city when the work to be performed is intrinsically dangerous or where its performance necessarily constitutes an obstruction or defect in the streets, the city owing to the public the duty of keeping the streets in a safe condition for travel, which duty can not be thrown off or devolved upon another. *Storrs* v. *City of Utica*, 17 N. Y. 104; *Circleville* v. *Neuding*, 41 Ohio St. 465; *Village of Jefferson* v. *Chapman*, 127 Ill. 438; *Southwell* v. *City of Detroit*, 74 Mich. 438; *City of Logansport* v. *Dick*, 70 Ind. 65; *Savannah* v. *Waldner*, 49 Ga. 316. While recognizing the limited extent of the exemption above mentioned the court, in the principal case, said that the neutral ground being only occasionally used the hole did not necessarily constitute a defect in the street and for that reason the facts brought the case within the rule exempting contractees from liability for loss caused by the negligent acts of independent contractors. No case is cited in support of the view taken and from the fact that such neutral ground was open to the public and actually used by them it seems that the case might with equally good reason be said to be governed by the cases holding cities liable for any defects in the streets, even though the defect is caused by the act of an independent contractor.

PARTNERSHIP—ESSENTIALS—AGREEMENT TO SHARE PROFITS.—Scott had agreed with B and H, the other defendants in this action, that when he had sunk a mining shaft to a certain depth he should be entitled to one-half of the profits, all the expenses of the venture to be paid by Scott himself. Plaintiff sues B, H, and Scott as partners for materials furnished to Scott alone. The court below gave judgment against Scott but not against B and H, on the ground that a mere agreement to share profits does not effect a partnership. *Held*, that "participation in the profits of a business raises a presumption of partnership." *Tamblyn* v. *Scott et al.* (1905), — Mo. —, 85 S. W. Rep. 918.

The early English cases held that when individuals shared profits they were partners as to third persons. *Grace* v. *Smith*, 2 Wm. Bl. 998; *Waugh* v. *Carver*, 2 H. Bl. 235, 2 SMITH'S LEADING CASES, 1316. The case under discussion follows *Torbert* v. *Jeffrey*, 161 Mo. 645, 61 S. W. Rep. 823, in which substantially the same doctrine is announced. In the latter case it was held that participation in profits raised a presumption of partnership and that this presumption was conclusive unless rebutted by satisfactory evidence. There are some cases in other jurisdictions that still support this doctrine. *Brandon & Dreyer* v. *Connor*, 117 Ga. 759, 45 S. E. Rep. 371, 63 L. R. A. 260; *Cleveland* v. *Anderson*, 2 Tex. Ct. App. (Civ. Cas.) 138; *Leggett* v.